



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

January 14, 2003

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
John B. Connally Building, 6th Floor
301 Tarrow
College Station, Texas 77840-7896

OR2003-0270

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174963.

Texas A&M University (the "university") received a written request for the following information:

1. any communication(s) from January 1, 2000 to the present from or to Iams regarding any Nutro product(s) or claim(s); and
2. any communication(s) from January 1, 2000 to the present from or to Iams regarding Poultry/Chicken By-Product Meal Poultry/chicken Meal, and Poultry Product Meal.

You do not contend that the requested information is excepted from public disclosure, but rather you have requested a decision from this office pursuant to section 552.305 of the Government Code. This section allows governmental bodies to rely on third parties having a privacy or property interest in requested information to submit their own arguments as to why such requested information should be withheld from the public.

In accordance with section 552.305(d), the university notified the Iams Company of the records request and of its right to submit arguments to this office. *See Gov't Code* § 552.305(d); Open Records Decision No. 542 (1990) (determining that statutory predecessor

to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B).

As of the date of this ruling, this office has not received a response from the Iams Company indicating that it wishes to have any portion of the requested information withheld from the public. This office therefore has no basis for concluding that this company has a privacy or property interest in this information. Consequently, the university must release the requested information in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

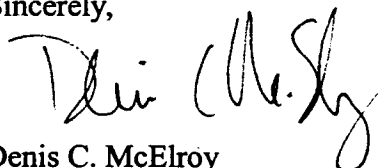
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/RWP/lmt

Ref: ID# 174963

Enc: Submitted documents

c: Mr. J. Nelson Wilkinson
FOIA Administrator
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